

Niall P. McCarthy (SBN 160175)  
nmccarthy@cpmlegal.com  
Elizabeth T. Castillo (SBN 280502)  
ecastillo@cpmlegal.com  
Melissa Montenegro (SBN 329099)  
mmontenegro@cpmlegal.com  
Kevin J. Boutin (SBN 334965)  
kboutin@cpmlegal.com  
**COTCHETT, PITRE & McCARTHY, LLP**  
840 Malcolm Road, Suite 200  
Burlingame, CA 94010  
Tel: (650) 697-6000

Matthew D. Schultz (*pro hac vice*)  
mschultz@levinlaw.com  
William F. Cash (*pro hac vice*)  
bcash@levinlaw.com  
Scott Warrick (*pro hac vice*)  
swarrick@levinlaw.com  
**LEVIN, PAPANTONIO, RAFFERTY,  
PROCTOR, BUCHANAN, O'BRIEN,  
BARR & MOUGEY, P.A.**  
316 S. Baylen St., Suite 600  
Pensacola, FL 32502  
Tel: (850) 435-7140

R. Frank Melton, II (*pro hac vice*)  
melton@newsomelaw.com  
C. Richard Newsome (*pro hac vice*)  
newsome@newsomelaw.com  
William C. Ourand, Jr. (*pro hac vice*)  
ourand@newsomelaw.com  
**NEWSOME MELTON, PA**  
201 S. Orange St., #1500  
Orlando, FL 32801  
Tel: (407) 280-1433

Courtney L. Davenport (*pro hac vice*)  
courtney@thedavenportlawfirm.com  
**THE DAVENPORT LAW FIRM, LLC**  
18805 Porterfield Way  
Germantown, MD 20874  
Tel: (703) 901-1660

*Counsel for Plaintiffs & the Proposed Classes*

**UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA**

JOHN BRITTON, EVA JACINTO, CELESTE  
FELICE, GLENDA DILLON, STEPHEN  
GEARHART, PATRICIA JONES, MELISSA  
WARREN, NICOLE SENKPEIL, ENIKO GEDO,  
JEREMY YOUNG, RHONDA HUNT MUHAMMED,  
KRISTEN LUIZ, ANTHONY RASPANTINI,  
FRANCINE LEWIS, and MATTHEW KAKOL, on  
behalf of themselves and all others similarly situated,

Plaintiffs,

v.

ARC AUTOMOTIVE, INC.,  
AUDI AKTIENGESELLSCHAFT,  
AUDI OF AMERICA, LLC,  
BAYERISCHE MOTOREN WERKE  
AKTIENGESELLSCHAFT,  
BMW OF NORTH AMERICA, LLC,  
FORD MOTOR COMPANY,  
GENERAL MOTORS, LLC,  
JOYSON SAFETY SYSTEMS,  
DR. ING. H.C. F. PORSCHE AG,  
PORSCHE CARS NORTH AMERICA, INC.,  
TOYODA GOSEI NORTH AMERICA, INC.,  
VOLKSWAGEN AKTIENGESELLSCHAFT, and  
VOLKSWAGEN GROUP OF AMERICA, INC.,

Defendants.

Case No. 3:22-CV-03053-JD

**PLAINTIFFS' OPPOSITION TO  
DEFENDANTS'  
ADMINISTRATIVE MOTION  
TO RE-SET AUGUST 25, 2022  
CASE MANAGEMENT  
CONFERENCE**

Plaintiffs hereby submit this Opposition to Defendants' Administrative Motion to Re-Set the August 25, 2022 Case Management Conference set for August 25, 2022 at 10:00 a.m. ECF Nos. 28 (Reassignment Order Setting CMC), 90 (Defendants' Administrative Motion). Plaintiffs filed the initial complaint almost three months ago on May 24, 2022. ECF No. 1. This is the first CMC in the above-captioned action and has been scheduled since June 13, 2022. ECF No. 28. For the following reasons, the Court should deny Defendants' motion and proceed with the CMC.

**A. Legal Standard**

Pursuant to this Court's order:

Any request to reschedule a case management conference must be made in writing, by stipulation if possible, not less than 10 calendar days before the conference date.

*Good cause must be shown.* The conference date will not be rescheduled unless the Court grants the request. Parties cannot change the date by stipulation.

Standing Order for Civil Cases Before Judge James Donato ¶ 7 (emphasis added).

**B. The Court Should Not Reschedule the CMC**

The Court should deny Defendants' motion because they cannot show good cause for rescheduling the CMC, which has been on calendar for over two months. Defendants essentially argue that the Court should reschedule the Case Management Conference because Plaintiffs have not served all Defendants at this time. This argument is unavailing for two reasons. First, Plaintiffs have served all nine U.S.-based Defendants at this time. Plaintiffs served the initial complaint on Defendants ARC Automotive, Inc., Audi of America, LLC, Ford Motor Company, General Motors, LLC, Joyson Safety Systems, Toyoda Gosei North America, Inc., and Volkswagen Group of America, Inc. on May 26-27, 2022. ECF Nos. 19-23, 26-27. Plaintiffs also served their First Amended Complaint filed on August 10, 2022, ECF No. 84, on newly named Defendants BMW of North America, LLC and Porsche Cars North America, Inc. on August 12, 2022. ECF Nos. 88-89. No other U.S.-based Defendants need to be served. Plaintiffs intend to move for an order authorizing alternative service on the four foreign-based Defendants—Audi Aktiengesellschaft, Bayerische Motoren Werke Aktiengesellschaft, Dr. Ing. H.C. F. Porsche AG, and Volkswagen Aktiengesellschaft—pursuant to Rule 4(f)(3) shortly. *See* Fed. R. Civ. P. 4(f)(3)

(permitting service “by other means not prohibited by international agreement, as the court orders”). Defendants cannot reasonably claim any prejudice would result from proceeding with the initial CMC where service is largely, though not entirely, complete. This is particularly true given the as-yet unserved Defendants likely share counsel with Defendants which already have been served.

Furthermore, granting Defendants’ motion to reschedule the CMC based on the status of service would invite delay tactics in class actions involving foreign defendants, such as this one. Defendants are often named at various stages of litigation as discovery proceeds, and the fact that Plaintiffs have not served all potential Defendants does not justify rescheduling the CMC in this action. If courts waited until all defendants in complex actions were served to hold an initial CMC, such conferences would be routinely delayed until months or years after the filing of the initial complaint. This sort of delay cannot be squared with the primary object of Federal Rule of Civil Procedure 1, which is to provide for a “just, speedy and inexpensive determination” of actions. *See* Fed. R. Civ. P. 1; *see also Benson v. Asurion Corp.*, No. CIV.A 3:10-0526, 2010 WL 2253533, at \*1 (M.D. Tenn. June 1, 2010) (“[T]he fact that Defendant may have been served but an answer is not yet due, shall not constitute good cause for continuing the Initial Case Management Conference.”).<sup>1</sup>

### **C. Conclusion**

For the foregoing reasons, the Court should deny Defendants’ administrative motion to reschedule the upcoming CMC.

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<sup>1</sup> In addition, on June 14, 2022, Plaintiffs requested that counsel for Audi of America, LLC and Volkswagen Group of America, Inc. accept service on behalf of Audi Aktiengesellschaft and Volkswagen Aktiengesellschaft. On July 8, 2022, counsel for Audi of America, LLC and Volkswagen Group of America, Inc. advised Plaintiffs that they were not authorized to do so. Defendants should not now be permitted to rely on their lack of cooperation regarding service as a means of delay.

1 Date: August 15, 2022

/s/ Elizabeth T. Castillo

2 Niall P. McCarthy (SBN 160175)  
nmccarthy@cpmlegal.com  
3 Elizabeth T. Castillo (SBN 280502)  
ecastillo@cpmlegal.com  
4 Melissa Montenegro (SBN 329099)  
mmontenegro@cpmlegal.com  
5 Kevin J. Boutin (SBN 334965)  
kboutin@cpmlegal.com  
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7 840 Malcolm Road, Suite 200  
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mschultz@levinlaw.com  
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bcash@levinlaw.com  
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swarrick@levinlaw.com  
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15 316 S. Baylen St., Suite 600  
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melton@newsomelaw.com  
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Newsome@newsomelaw.com  
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ourand@newsomelaw.com  
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28